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13
14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**
16

17 RILEY FROOMIN, individually and
18 on behalf of all others similarly
19 situated,

20 *Plaintiff,*

21 v.

22 EVRY JEWELS INCORPORATED,

23 *Defendant.*
24
25
26
27
28

Case No. 2:24-cv-05395

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

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I. Introduction.

1. Advertised “sale” prices are important to consumers. Consumers are more likely to purchase an item if they know that they are getting a good deal. Further, if consumers think that a sale will end soon, they are likely to buy now, rather than wait, comparison shop, and buy something else.

2. While there is nothing wrong with a legitimate sale, a fake one—that is, one with made-up regular prices, made-up discounts, and made-up expirations—is deceptive and illegal.

3. Section 17500 of California’s False Advertising Law prohibits businesses from making statements they know or should know to be untrue or misleading. Cal. Bus. & Prof. Code § 17500. This includes statements falsely suggesting that a product is on sale, when it actually is not.

4. Moreover, section 17501 of California’s False Advertising Law provides that “[n]o price shall be advertised as a former price ... unless the alleged former price was the prevailing market price ... within three months next immediately preceding” the advertising. Cal. Bus. & Prof. Code § 17501. So, in addition to generally prohibiting untrue and misleading fake discounts, it also specifically prohibits this particular flavor of fake discount (where the advertised former price is not the prevailing price during the specified timeframe).

5. In addition, California’s Consumer Legal Remedies Act prohibits “advertising goods or services with the intent not to sell them as advertised” and specifically prohibits “false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions.” Cal. Civ. Code § 1770(a)(9), (13).

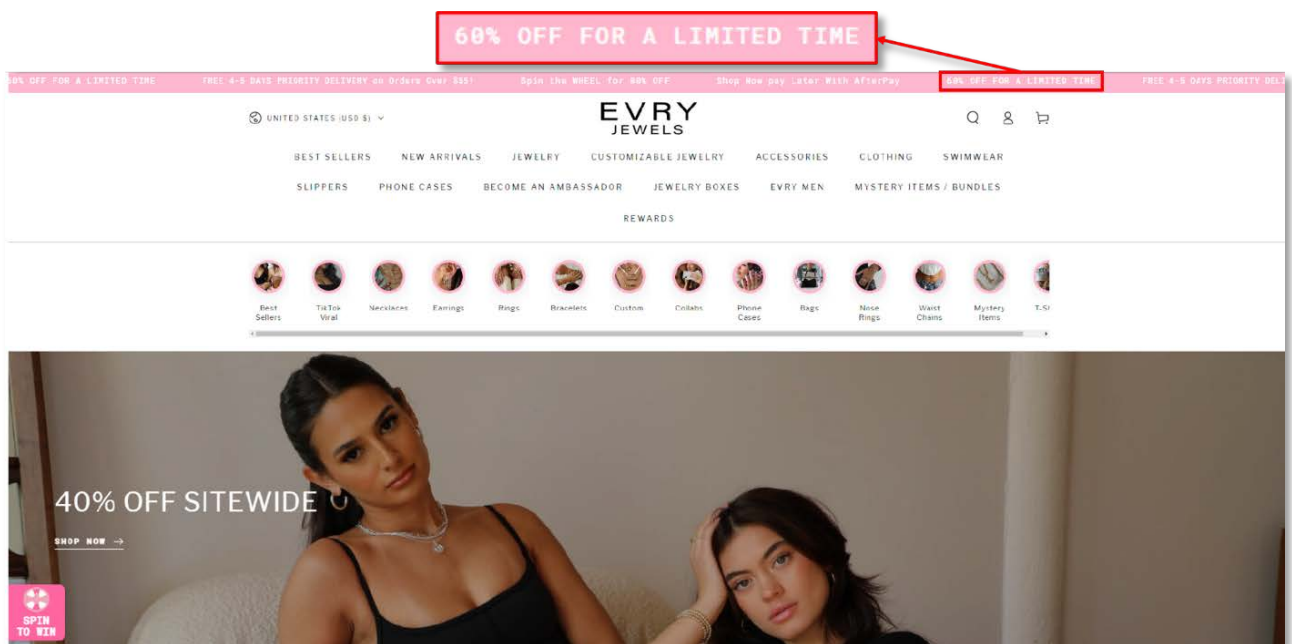
6. Moreover, the Federal Trade Commission’s regulations prohibit false or misleading “former price comparisons,” for example, making up “an artificial, inflated price ... for the purpose of enabling the subsequent offer of a large reduction” off that price. 16 C.F.R. § 233.1. They also prohibit false or misleading “retail price comparisons” and “comparable value comparisons,” for example, ones that falsely

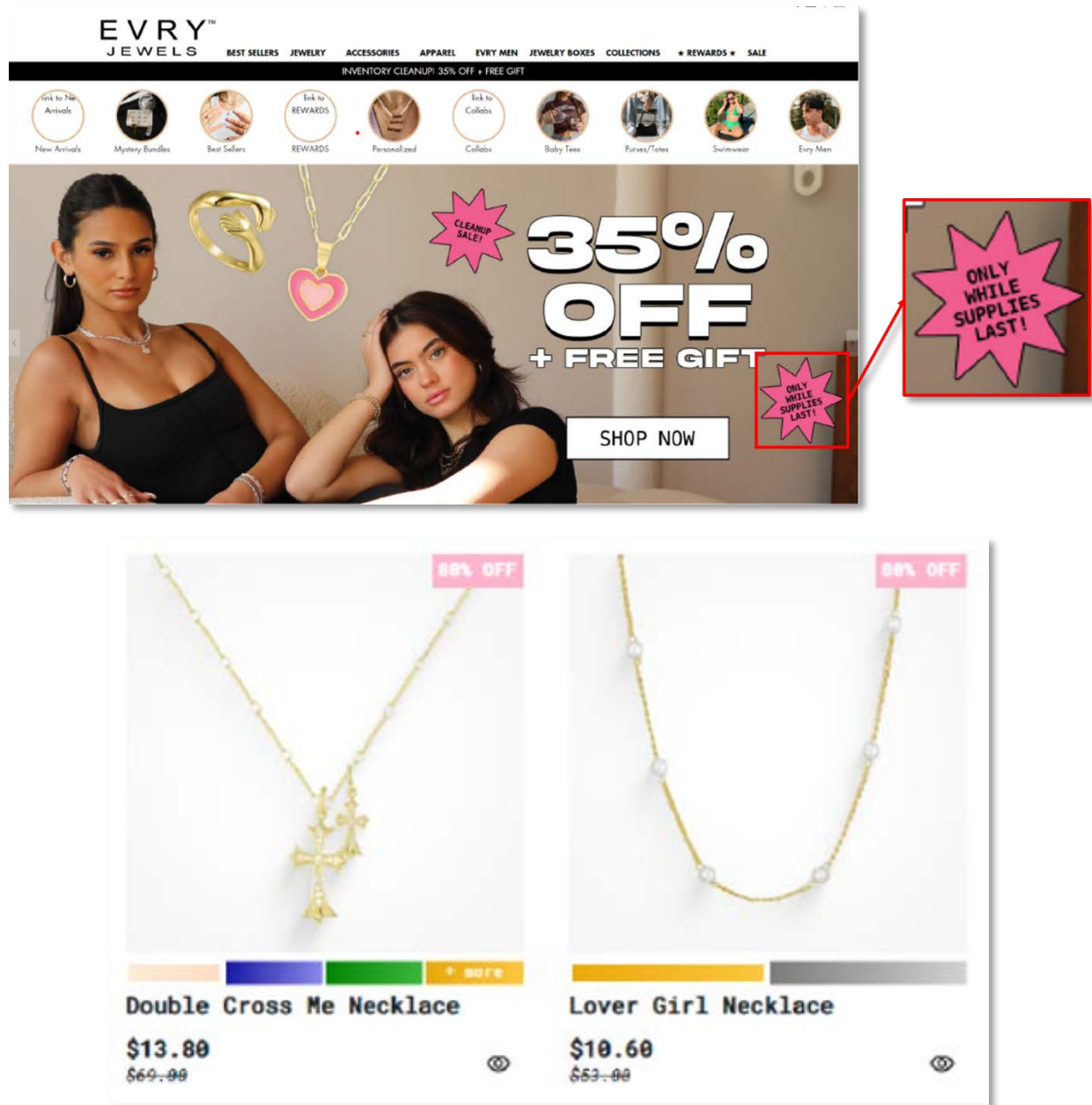
1 suggest that the seller is “offer[ing] goods at prices lower than those being charged by
2 others for the same merchandise” when this is not the case. 16 C.F.R. § 233.1.

3 7. So, as numerous courts have found, fake sales violate these laws. They also
4 violate California’s general prohibition on unlawful, unfair, and deceptive business
5 practices. *See* Cal. Bus. & Prof. Code § 17200.

6 8. Defendant Evry Jewels Incorporated (“Defendant” or “Evry Jewels”) sells
7 and markets jewelry products and accessories online through the Evry Jewels website,
8 www.evryjewels.com.

9 9. On its website, Defendant lists prices and advertises purported time-limited
10 discounts from those listed prices. These include “LIMITED TIME” discounts offering
11 “X% off Sitewide.” Defendant purports that sales are close to ending by claiming that
12 they subsist “ONLY WHILE SUPPLIES LAST!”. Defendant also advertises that its
13 Products have a lower discount price as compared to a higher, regular price shown in
14 grey and/or strikethrough font. *See* these examples:





10. Far from being time-limited, however, Defendant's discounts are *always* available. As a result, everything about Defendant's price and purported discount advertising is false. The list prices Defendant advertises are not actually Defendant's regular prices (the prices it usually charges), because Defendant's Products are *always* available for less than that. The purported discounts Defendant advertises are not the true discount the customer is receiving, and are often not a discount at all, because customers can *always* buy Defendant's Products at the discount price. Nor are the

1 purported discounts “LIMITED TIME” or “ONLY WHILE SUPPLIES LAST”—quite
2 the opposite, they are always available.

3 11. As described in greater detail below, Ms. Froomin bought Products from
4 Defendant from its website, www.evryjewels.com. When Ms. Froomin made her
5 purchase, Defendant advertised that a sale was going on, and so Defendant represented
6 that the Products Ms. Froomin purchased were being offered at a steep discount from its
7 purported regular price that Defendant advertised in strikethrough font. And based on
8 Defendant’s representations, Ms. Froomin believed that she was purchasing Products
9 whose regular price and market value were the purported list price that Defendant
10 advertised, and that she was receiving a substantial discount. These reasonable beliefs are
11 what caused Ms. Froomin to buy from Defendant when she did.

12 12. In truth, however, the representations Ms. Froomin relied on were not true.
13 The purported list prices were not the true regular prices, the purported discounts were
14 not the true discounts. Had Defendant been truthful, Ms. Froomin and other consumers
15 like her would not have purchased the Products, or would have paid less for them.

16 13. Ms. Froomin brings this case for herself and the other customers who
17 purchased Defendant’s Products.

18 **II. Parties.**

19 14. Plaintiff Riley Froomin is domiciled in San Luis Obispo, California.

20 15. The proposed class includes citizens of every state.

21 16. Defendant Evry Jewels Incorporated is a Delaware corporation with its
22 principal place of business at 19575 Biscayne Boulevard, #1344, Aventura, Florida 33180.

23 **III. Jurisdiction and Venue.**

24 17. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(d)(2).
25 The amount in controversy exceeds \$5,000,000, exclusive of interest and costs, and the
26 matter is a class action in which one or more members of the proposed class are citizens
27 of a state different from Defendant.
28

1 18. This Court has personal jurisdiction over Defendant. Defendant does
2 business in California. It advertises and sells its Products in California, and serves a
3 market for its Products in California. Due to Defendant's actions, its Products have been
4 marketed and sold to consumers in California, and harmed consumers in California.
5 Plaintiff's claims arise out of Defendant's contacts with this forum. Due to Defendant's
6 actions, Plaintiff purchased Defendant's Products in California, and was harmed in
7 California.

8 19. Venue is proper under 28 U.S.C. § 1391(b)(1) and 28 U.S.C. § 1391(d)
9 because Defendant would be subject to personal jurisdiction in this District if this
10 District were a separate state. Defendant advertises and sells its Products to customers in
11 this District, serves a market for its Products in this District, and Plaintiff's claims arise
12 out of Defendant's contacts in this forum. Venue is also proper under 28 U.S.C.
13 § 1391(b)(2) because a substantial part of the events giving rise to the claim occurred
14 here.

15 **IV. Facts.**

16 **A. Defendant's fake prices and fake discounts.**

17 20. Defendant Evry Jewels distributes, markets, and sells jewelry products and
18 accessories. Defendant sells its Products directly to consumers through its website,
19 www.evryjewels.com.

20 21. On its website, Defendant creates the false impression that its Products'
21 regular prices are higher than they truly are.

22 22. At any given time, on its website, Defendant advertises steep discounts on
23 its Products. These discounts always offer "X%" off sitewide. Reasonable consumers
24 reasonably interpret Defendant's advertisements to mean that they will be getting a
25 discount "off" of the prices that Defendant usually charges for its Products. Even
26 though in truth these discounts run in perpetuity. And it advertises these discounts
27 extensively: on an attention-grabbing banner on every webpage of its website; on the
28 products listing pages, and on the individual product pages for each Product. It advertises

them by touting “X% off”; and by advertising list prices in strikethrough font next to lower, purported discount prices. See these example screenshots:

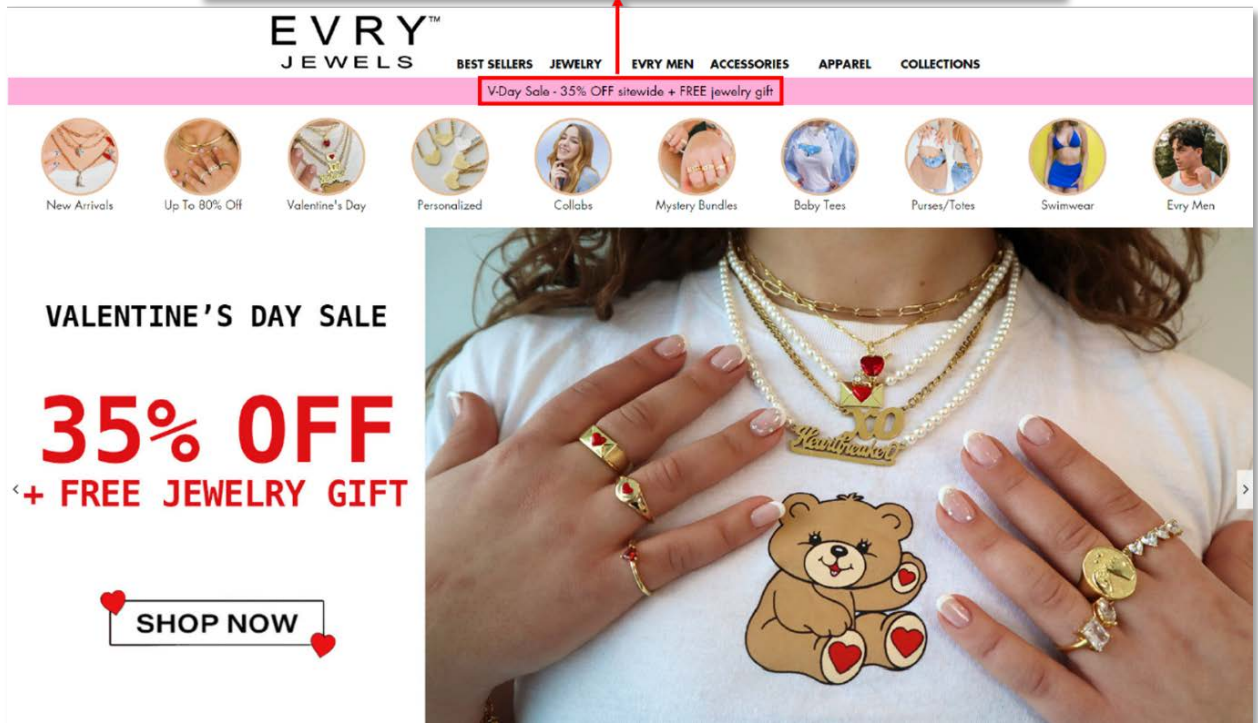


Captured on February 5, 2021



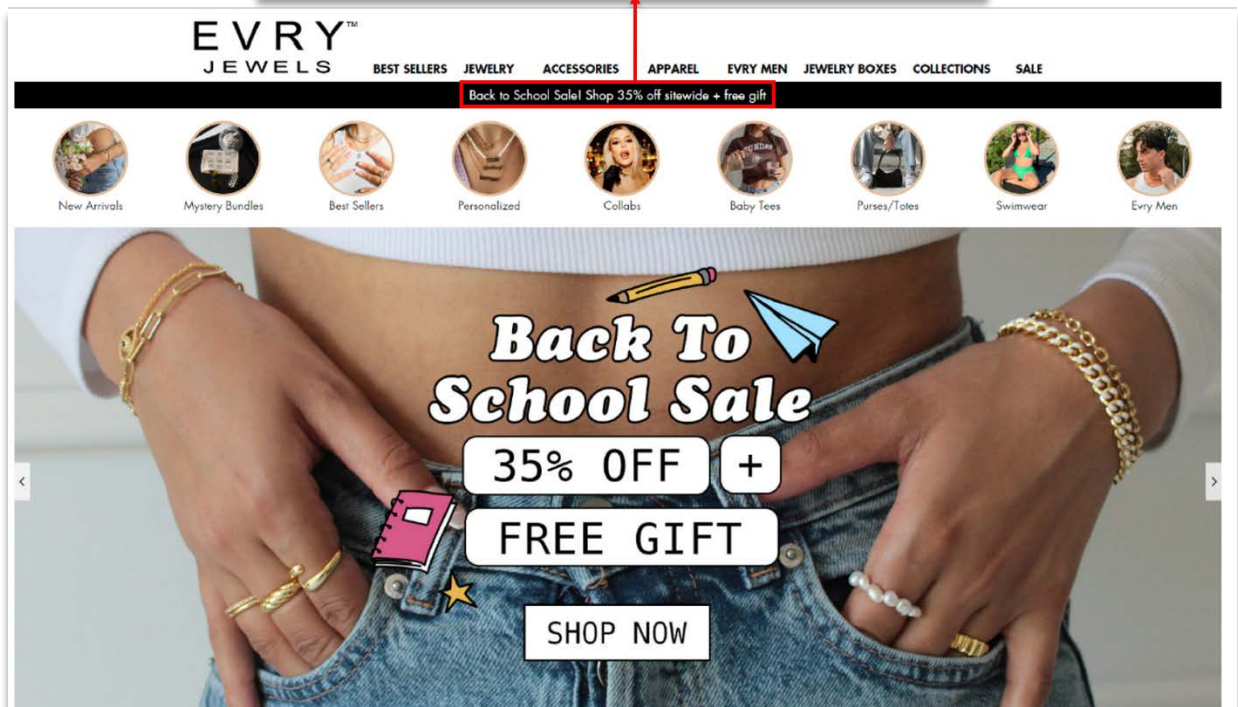
Captured on September 9, 2021

V-Day Sale - 35% OFF sitewide + FREE jewelry gift

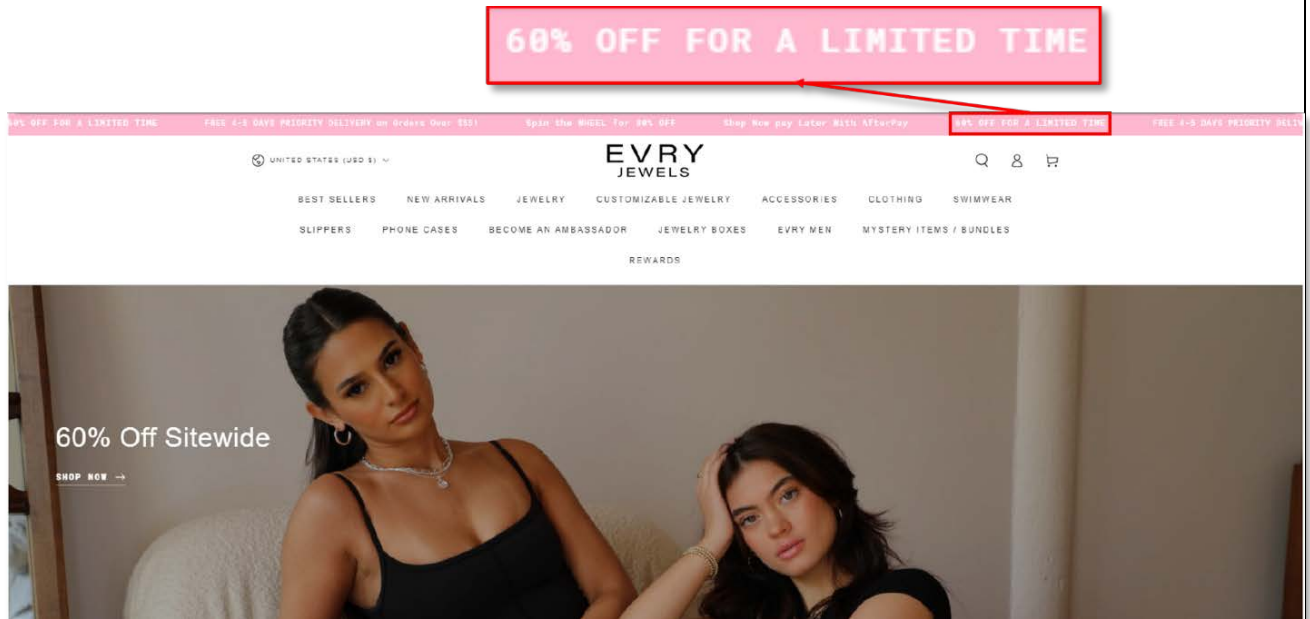


Captured on February 4, 2022

Back to School Sale! Shop 35% off sitewide + free gift



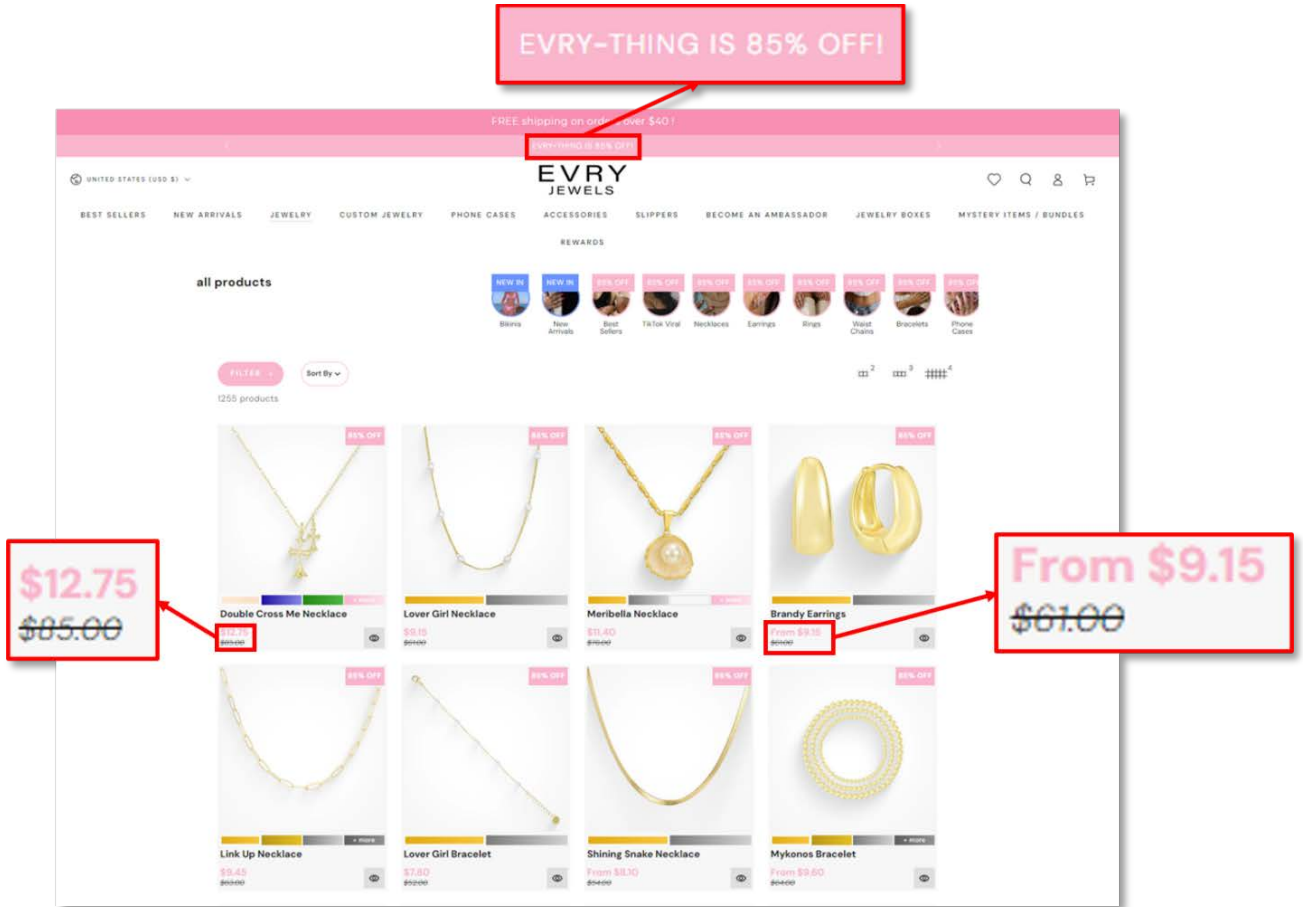
Captured on August 24, 2022



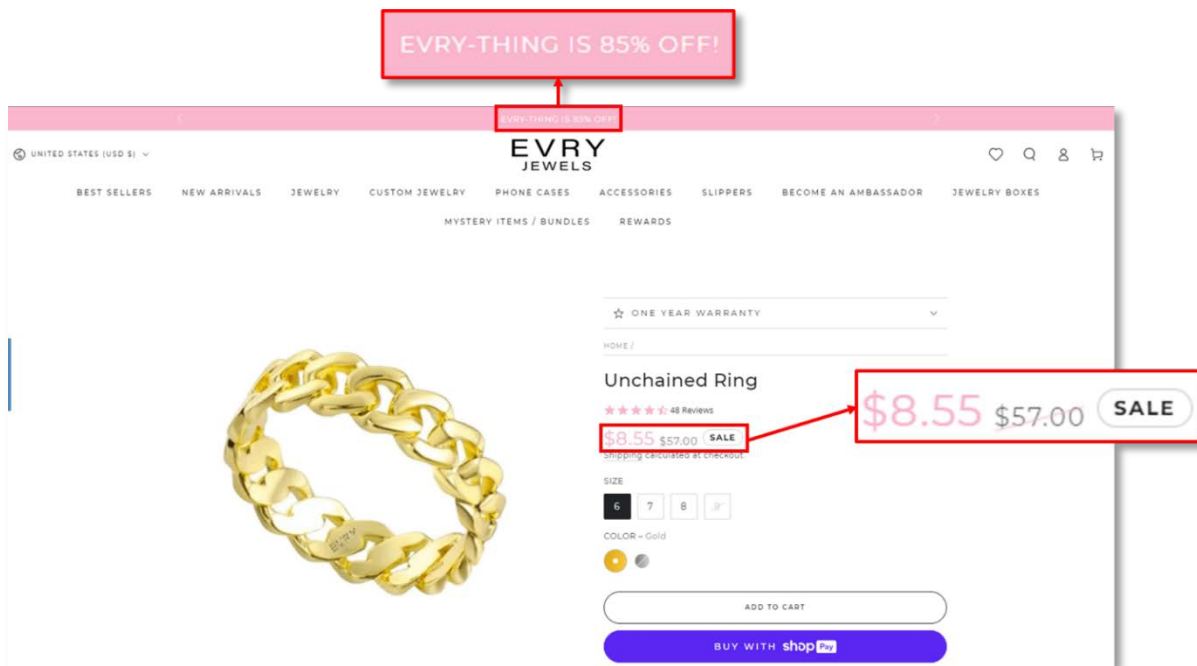
Captured on April 1, 2023



Captured on November 29, 2023



Captured on June 18, 2024



Captured on June 18, 2024

1 23. To confirm that Defendant always offers discounts off purported regular
2 prices, Plaintiff's counsel performed an investigation of Defendant's advertising practices
3 using the Internet Archive's Wayback Machine (available at www.archive.org).¹ That
4 investigation confirms that Defendant has persistent sales. For example, 19 randomly
5 selected screenshots of Defendant's website, www.evryjewels.com, were collected from
6 the Internet Archive's Wayback Machine, from the 2023-2024 period. One hundred
7 percent of the 19 randomly selected screenshots of Defendant's website, captured on the
8 Wayback Machine displayed a purportedly limited sitewide discount.

9 24. Reasonable consumers do not realize the fake nature of the sale. It is not
10 apparent from merely purchasing the Products, because the sale appears to be a bona fide
11 sale. Consumers do not have any reason to go back to the site day after day to discover
12 that there is still a sale. And, even a consumer who occasionally checks the website
13 would reasonably believe that there happened to be another sale. Discovering
14 Defendant's deception required extensive mining of internet archives, which revealed
15 that the sale is not limited in time, that the discounts are fake, and that the advertised
16 regular prices are fake.

17 25. In addition, Defendant's website lists fake regular prices (that is, prices
18 reflecting the list price or value of an item) and fake discounts.

19 26. For example, on December 21, 2023, Defendant advertised a purported
20 limited sale of "80% OFF SITEWIDE" on www.evryjewels.com. As part of this
21 discount, Defendant listed purported regular prices in strikethrough font. For example,
22 Defendant represented that the Double Cross Me Necklace had a regular list price of
23 \$69.00 and the discount price was \$13.80:

24
25
26
27
28 ¹ The Internet Archive, available at archive.org, is a library that archives web pages.
<https://archive.org/about/>



Captured on December 21, 2023

27. But the truth is, the Double Cross Me Necklace's listed regular price of \$69.00 is not its regular price. Instead, the purported "regular price" is always changing, with the discounted price fluxuating as well (*e.g.*, on July 25, 2023, Evry Jewels advertised an 80% off sitewide sale with the necklace originally priced at \$77.00 and a discounted price of \$15.41. On June 18, 2024, Defendant advertised an 85% off sitewide sale but the original price of the necklace was \$85.00 and the discounted price was \$12.75), and the customer is not receiving the advertised discount by buying during the purported sale.

28. Using these tactics, Defendant leads reasonable consumers to believe that they will get a discount on the Products they are purchasing if they purchase during the limited-time promotion. In other words, it leads reasonable consumers to believe that if they buy now, they will get a Product worth X at a discounted, lower price Y; and they will get a discount. This creates a sense of urgency: buy now, and you will receive something worth more than you pay for it; wait, and you will pay more for the same thing later.

29. Based on Defendant's advertisements, reasonable consumers reasonably believe that the list prices are Defendant's regular prices, and its former prices (that is, the

1 price at which the goods were actually offered for sale before the limited-time offer went
2 into effect). In other words, reasonable consumers believe that the list prices Defendant
3 advertises represent the amount that consumers usually have to pay for Defendant's
4 goods, formerly had to pay for Defendant's goods, before the limited-time sale began,
5 and will again have to pay for Defendant's goods when the sale ends. Said differently,
6 reasonable consumers reasonably believe that, prior to the supposedly time-limited sale,
7 consumers had to pay the list price to get the item and did not have the opportunity to
8 get a discount from that list price.

9 30. Reasonable consumers also reasonably believe that the list prices Defendant
10 advertises represent Defendant's regular prices, and the true market value of the
11 Products, and that they are the prevailing prices for those Products. Reasonable
12 consumers also believe that they are receiving reductions from Defendant's regular prices
13 in the amounts advertised. In truth, however, Defendant *always* offers discounts off the
14 list prices it advertises. As a result, everything about Defendant's price and purported
15 discount advertising is false. The list prices Defendant advertises are not actually
16 Defendant's regular or former prices, or the prevailing prices for the Products Defendant
17 sells, and do not represent the true market value for the Products, because Defendant's
18 Products are *always* available for less than that, and customers did not have to formerly
19 pay that amount to get those items. The purported discounts Defendant advertises are
20 not the true discount the customer is receiving. Nor are the purported discounts time
21 limited—quite the opposite, they are always available.

22 **B. Defendant's advertisements are unfair, deceptive, and unlawful.**

23 31. Section 17500 of California's False Advertising Law prohibits businesses
24 from making statements they know or should know to be untrue or misleading. Cal. Bus.
25 & Prof. Code § 17500. This includes statements falsely suggesting that a product is on
26 sale, when it actually is not.

27 32. Moreover, section 17501 of California's False Advertising Law specifically
28 provides that "[n]o price shall be advertised as a former price ... unless the alleged

1 former price was the prevailing market price ... within three months next immediately
2 preceding” the advertising. Cal. Bus. & Prof. Code § 17501.

3 33. In addition, California’s Consumer Legal Remedies Act prohibits
4 “advertising goods or services with the intent not to sell them as advertised” and
5 specifically prohibits “false or misleading statements of fact concerning reasons for,
6 existence of, or amounts of price reductions.” Cal. Civ. Code § 1770(a)(9), (13).

7 34. In addition, the Federal Trade Commission’s regulations prohibit false or
8 misleading “former price comparisons,” for example, making up “an artificial, inflated
9 price ... for the purpose of enabling the subsequent offer of a large reduction” off that
10 price. 16 C.F.R. § 233.1. They also prohibit false or misleading “retail price
11 comparisons” and “comparable value comparisons,” for example ones that falsely
12 suggest that the seller is “offer[ing] goods at prices lower than those being charged by
13 others for the same merchandise” when this is not the case. 16 C.F.R. § 233.1.

14 35. And finally, California’s unfair competition law bans unlawful, unfair, and
15 deceptive business practices. *See* Cal. Bus. & Prof. Code § 17200.

16 36. Here, as described in detail above, Defendant makes untrue and misleading
17 statements about its prices. Defendant advertises regular prices that are not its true
18 regular prices, or its former prices, and were not the prevailing market price in the three
19 months immediately preceding the advertisement. In addition, Defendant advertised
20 goods or services with the intent not to sell them as advertised, for example, by
21 advertising goods having certain former prices and/or market values without the intent
22 to sell goods having those former prices and/or market values. Defendant made false or
23 misleading statements of fact concerning the reasons for, existence of, and amounts of
24 price reductions, including the existence of steep discounts, and the amounts of price
25 reductions resulting from those discounts. And Defendant engaged in unlawful, unfair,
26 and deceptive business practices.

C. Defendant's advertisements harm consumers.

37. Based on Defendant's advertisements, reasonable consumers would expect that the listed regular prices are the regular prices at which Defendant usually sells its Products; that these are former prices that Defendant sold its Products at before the sitewide discount was introduced.

38. Reasonable consumers would also expect that, if they purchase during the sale, they will receive an item whose regular price and/or market value is the advertised regular price and that they will receive the advertised discount from the regular purchase price.

39. In addition, consumers are more likely to buy the product if they believe that the product is on sale and that they are getting a product with a higher regular price and/or market value at a substantial discount.

40. Consumers that are presented with discounts are substantially more likely to make the purchase. "Nearly two-thirds of consumers surveyed admitted that a promotion or a coupon often closes the deal, if they are wavering or are undecided on making a purchase."² And, "two-thirds of consumers have made a purchase they weren't originally planning to make solely based on finding a coupon or discount," while "80% [of consumers] said they feel encouraged to make a first-time purchase with a brand that is new to them if they found an offer or discount."³

41. Similarly, when consumers believe that an offer is expiring soon, the sense of urgency makes them more likely to buy a product.⁴

² <https://www.invespcro.com/blog/how-discounts-affect-online-consumer-buying-behavior/>.

³ RetailMeNot Survey: Deals and Promotional Offers Drive Incremental Purchases Online, Especially Among Millennial Buyers (prnewswire.com).

⁴ <https://cxl.com/blog/creating-urgency/> (addition of a countdown timer increased conversion rates from 3.4%-10%); Dynamic email content leads to 400% increase in conversions for Black Friday email | Adestra (uplandsoftware.com) (400% higher conversation rate for ad with countdown timer).

42. Thus, Defendant's advertisements harm consumers by inducing them to make purchases based on false information. In addition, by this same mechanism, Defendant's advertisements artificially increase consumer demand for Defendant's Products. This puts upward pressure on the prices that Defendant can charge for its Products. As a result, Defendant can charge a price premium for its Products, that it would not be able to charge absent the misrepresentations described above. So, due to Defendant's misrepresentations, Plaintiff and the class paid more for the Products they bought than they otherwise would have.

D. Plaintiff was misled by Defendant's misrepresentations.

43. On September 27, 2023, Ms. Froomin purchased a gold Milos Bracelet, a gold Unchained Ring, and gold Itty Bitty Hoops from Defendant's website, www.evryjewels.com. She made this purchase while living in San Luis Obispo, California. The website represented that the Milos Bracelet had a regular price, but was on sale for a discounted price of \$10.50 plus tax, that the Unchained Ring had a regular price, but was on sale for a discounted price of \$10.50 plus tax, and that the Itty bitty Hoops had a regular price, but was on sale for a discounted price of \$10.50 plus tax. Defendant represented that Ms. Froomin was receiving a discount for her items that she ordered. Ms. Froomin's email confirmation represented that Ms. Froomin's total discounted price was \$28.35 plus tax.⁵

44. Defendant represented that the Products had a certain regular price and that Ms. Froomin was receiving a substantial discount for the items that she purchased.

45. Ms. Froomin read and relied on Defendant's representations on Defendant's website, specifically that the Products were being offered at a discount for a limited time and that they had higher regular and usual prices, and that she would be receiving a price reduction by buying now. Based on Defendant's representations described above, Ms. Froomin reasonably understood that the Products she was purchasing regularly (and before the promotion Defendant was advertising) retailed at the

⁵ In addition to the advertised discount, Ms. Froomin also applied a coupon code from her sorority for her purchase.

1 published list prices, that these published list prices were the market value of the Product
2 that she was buying; that she was receiving the advertised discount and a price reduction
3 as compared to the regular price, and that the advertised discount was only available for a
4 limited time (during the sitewide promotion). She would not have made the purchase if
5 she had known that the Products were not discounted as advertised, and that she was not
6 receiving the advertised discount.

7 46. Plaintiff faces an imminent threat of future harm. Plaintiff would purchase
8 Evry Jewels Products from Defendant again in the future if she could feel sure that
9 Defendant's list prices accurately reflected Defendant's regular prices and former prices,
10 and the market value of the Products, and that its discounts were truthful. But without
11 an injunction, Plaintiff has no realistic way to know which—if any—of Defendant's list
12 prices, discounts, and sales are not false or deceptive. For example, while she could wait
13 to see if the sale is actually limited, doing so could result in her missing out on the sale
14 (*e.g.*, if the sale is actually limited in time, and not permanent). Accordingly, Plaintiff is
15 unable to rely on Defendant's advertising in the future, and so cannot purchase the
16 Products she would like to purchase.

17 **E. Defendant breached its contract with and warranties to Ms. Froomin**
18 **and the putative class.**

19 47. When Ms. Froomin and other members of the putative class purchased and
20 paid for the Products they bought as described above, they accepted offers that
21 Defendant made, and thus, a contract was formed at the time that they made a purchase.
22 The offer was to provide Products having a particular listed regular price and market
23 value, and to provide those Products at the discounted price advertised on the website.

24 48. When Ms. Froomin made a purchase from Defendant, Ms. Froomin and
25 Defendant entered a contract.

26 49. Defendant's website lists the regular prices—the market values—of the
27 items that Defendant promised to provide. And Defendant agreed to provide a discount
28 equal to the difference between the regular prices, and the discounted prices paid by Ms.

1 Froomin and putative class members. Defendant also warranted that the regular price
2 and market value of the Products Ms. Froomin purchased was the advertised list price
3 and warranted that Ms. Froomin was receiving a specific discount on those Products.

4 50. The regular price and market value of the items Ms. Froomin and the
5 putative class members would receive, and the amount of the discount they would be
6 provided off the regular price of the item, were specific and material terms of the
7 contracts. They were also affirmations of fact about the Products and a promise relating
8 to the goods.

9 51. Ms. Froomin and other members of the putative class performed their
10 obligations under the contracts by paying for the items they purchased.

11 52. Defendant breached its contract by failing to provide Ms. Froomin and
12 other members of the putative class with Products that have a regular price and market
13 value equal to the regular price displayed, and by failing to provide the discount it
14 promised. Defendant also breached warranties for the same reasons.

15 **F. No adequate remedy at law.**

16 53. Plaintiff seeks damages and, in the alternative, restitution. Plaintiff is
17 permitted to seek equitable remedies in the alternative because she has no adequate
18 remedy at law.

19 54. A legal remedy is not adequate if it is not as certain as an equitable
20 remedy. The elements of Plaintiff's equitable claims are different and do not require the
21 same showings as Plaintiff's legal claims. For example, Plaintiff's FAL claim under
22 section 17501 (an equitable claim) is predicated on a specific statutory provision, which
23 prohibits advertising merchandise using a former price if that price was not the prevailing
24 market price within the past three months. Cal. Bus. & Prof. Code § 17501. Plaintiff
25 may be able to prove these more straightforward factual elements, and thus prevail under
26 the FAL, while not being able to prove one or more elements of her legal claims.

27 55. In addition, to obtain a full refund as damages, Plaintiff must show that the
28 Products she bought has essentially no market value. In contrast, Plaintiff can seek

1 restitution without making this showing. This is because Plaintiff purchased Products
 2 that she would not otherwise have purchased, but for Defendant's representations.
 3 Obtaining a full refund at law is less certain than obtaining a refund in equity.

4 56. Furthermore, the remedies at law available to Plaintiff are not equally
 5 prompt or otherwise efficient. The need to schedule a jury trial may result in delay. And
 6 a jury trial will take longer, and be more expensive, than a bench trial.

7 **V. Class action allegations.**

8 57. Plaintiff brings the asserted claims on behalf of the proposed class of:

- 9 • Nationwide Class: all persons who, within the applicable statute of
 10 limitations period, purchased one or more Evry Jewels Products advertised
 11 at a discount on Defendant's website.
- 12 • California Subclass: all persons who, while in the state of California and
 13 within the applicable statute of limitations period, purchased one or more
 14 Evry Jewels Products advertised at a discount on Defendant's website.

15 58. The following people are excluded from the class: (1) any Judge or
 16 Magistrate Judge presiding over this action and the members of their family; (2)
 17 Defendant, Defendant's subsidiaries, parents, successors, predecessors, and any entity in
 18 which the Defendant or its parents have a controlling interest and their current
 19 employees, officers, and directors; (3) persons who properly execute and file a timely
 20 request for exclusion from the class; (4) persons whose claims in this matter have been
 21 finally adjudicated on the merits or otherwise released; (5) Plaintiff's counsel and
 22 Defendant's counsel, and their experts and consultants; and (6) the legal representatives,
 23 successors, and assigns of any such excluded persons.

24 ***Numerosity & Ascertainability***

25 59. The proposed class contains members so numerous that separate joinder of
 26 each member of the class is impractical. There are tens or hundreds of thousands of
 27 class members.
 28

1 60. Class members can be identified through Defendant's sales records and
2 public notice.

3 ***Predominance of Common Questions***

4 61. There are questions of law and fact common to the proposed class.
5 Common questions of law and fact include, without limitation:

- 6 (1) whether Defendant made false or misleading statements of fact in its
7 advertisements;
8 (2) whether Defendant violated California's consumer protection statutes;
9 (3) whether Defendant committed a breach of contract;
10 (4) whether Defendant committed a breach of an express warranty;
11 (5) damages needed to reasonably compensate Plaintiff and the proposed class.

12 ***Typicality & Adequacy***

13 62. Plaintiff's claims are typical of the proposed class. Like the proposed class,
14 Plaintiff purchased the Evry Jewels Products advertised at a discount from Defendant.
15 There are no conflicts of interest between Plaintiff and the class.

16 ***Superiority***

17 63. A class action is superior to all other available methods for the fair and
18 efficient adjudication of this litigation because individual litigation of each claim is
19 impractical. It would be unduly burdensome to have individual litigation of millions of
20 individual claims in separate lawsuits, every one of which would present the issues
21 presented in this lawsuit.

22 **VI. Claims.**

23 **First Cause of Action:**

24 **Violation of California's False Advertising Law Bus. & Prof. Code §§ 17500 &**
25 **17501 et. seq.**

26 **(By Plaintiff and the California Subclass)**

27 64. Plaintiff incorporates each and every factual allegation set forth above.
28

1 65. Plaintiff brings this cause of action on behalf of herself and members of the
2 California Subclass.

3 66. Defendant has violated sections 17500 and 17501 of the Business and
4 Professions Code.

5 67. Defendant has violated, and continues to violate, section 17500 of the
6 Business and Professions Code by disseminating untrue and misleading advertisements to
7 Plaintiff and subclass members.

8 68. As alleged more fully above, Defendant advertises steep discounts on its
9 Products. Defendant does this, for example, by offering “\$X” or “X%” off sitewide, by
10 running these discounts in perpetuity, and by identifying the supposed savings that
11 customers are supposedly receiving by using list prices in strikethrough font by lower,
12 purported discount prices.

13 69. Furthermore, Defendant advertises former prices along with discounts.
14 Defendant does this, for example, by crossing out a higher price (*e.g.*, ~~\$85.00~~) and
15 displaying it by a lower, discounted price. Reasonable consumers would understand
16 prices denoted as regular prices from which “limited” sitewide discounts are calculated to
17 denote “former” prices, *i.e.*, the prices that Defendant charged before the limited
18 discount went into effect.

19 70. The prices advertised by Defendant are not Defendant’s regular prices. In
20 fact, those prices are never Defendant’s regular prices (*i.e.*, the price you usually have to
21 pay to get the product in question), because there is always a heavily-advertised
22 promotion ongoing entitling consumers to a discount. Moreover, for the same reasons,
23 those prices were not the former prices of the Products. Accordingly, Defendant’s
24 statements about the former prices of its Products, and its statements about its discounts
25 from those former prices, were untrue and misleading. In addition, Defendant’s
26 statements that its discounts are time-limited are false and misleading too.

27 71. In addition, Defendant has violated, and continues to violate, section 17501
28 of the Business and Professions Code by advertising former prices that were not the

1 prevailing market price within three months next immediately preceding the advertising.
2 As explained above, Defendant's advertised regular prices, which reasonable consumers
3 would understand to denote former prices, were not the prevailing market prices for the
4 Products within three months preceding publication of the advertisement. And
5 Defendant's former price advertisements do not state clearly, exactly, and conspicuously
6 when, if ever, the former prices prevailed. Defendant's advertisements do not indicate
7 whether or when the purported former prices were offered at all.

8 72. Defendant's misrepresentations were intended to induce reliance, and
9 Plaintiff saw, read, and reasonably relied on the statements when purchasing Evry Jewels
10 Products. Defendant's misrepresentations were a substantial factor in Plaintiff's purchase
11 decision.

12 73. In addition, subclass-wide reliance can be inferred because Defendant's
13 misrepresentations were material, i.e., a reasonable consumer would consider them
14 important in deciding whether to buy the Evry Jewels Products.

15 74. Defendant's misrepresentations were a substantial factor and proximate
16 cause in causing damages and losses to Plaintiff and the subclass.

17 75. Plaintiff and the subclass were injured as a direct and proximate result of
18 Defendant's conduct because (a) they would not have purchased Evry Jewels Products if
19 they had known the truth, and/or (b) they overpaid for the Products because the Evry
20 Jewels Products were sold at a price premium due to the misrepresentations.

21 **Second Cause of Action:**

22 **Violation of California's Consumer Legal Remedies Act**
23 **(by Plaintiff and the California Subclass)**

24 76. Plaintiff incorporates each and every factual allegation set forth above.

25 77. Plaintiff brings this cause of action on behalf of herself and members of the
26 California Subclass.

27 78. Plaintiff and the subclass are "consumers," as the term is defined by
28 California Civil Code § 1761(d).

1 79. Plaintiff and the subclass have engaged in “transactions” with Defendant as
2 that term is defined by California Civil Code § 1761(e).

3 80. The conduct alleged in this Complaint constitutes unfair methods of
4 competition and unfair and deceptive acts and practices for the purpose of the CLRA,
5 and the conduct was undertaken by Defendant in transactions intended to result in, and
6 which did result in, the sale of goods to consumers.

7 81. As alleged more fully above, Defendant made and disseminated untrue and
8 misleading statements of facts in its advertisements to subclass members. Defendant did
9 this by using fake regular prices, i.e., regular prices that are not the prevailing prices, and
10 by advertising fake discounts.

11 82. Defendant violated, and continues to violate, section 1770 of the California
12 Civil Code.

13 83. Defendant violated, and continues to violate, section 1770(a)(5) of the
14 California Civil Code by representing that Products offered for sale have characteristics
15 or benefits that they do not have. Defendant represents that the value of its Products is
16 greater than it actually is by advertising inflated regular prices and fake discounts for
17 Products.

18 84. Defendant violated, and continues to violate, section 1770(a)(9) of the
19 California Civil Code. Defendant violates this by advertising its Products as being
20 offered at a discount, when in fact Defendant does not intend to sell the Products at a
21 discount.

22 85. And Defendant violated, and continues to violate section 1770(a)(13) by
23 making false or misleading statements of fact concerning reasons for, existence of, or
24 amounts of, price reductions on its website, including by (1) misrepresenting the regular
25 price of Products on its website, (2) advertising discounts and savings that are
26 exaggerated or nonexistent, (3) misrepresenting that the discounts and savings are
27 unusually large, when in fact they are regularly available, and (4) misrepresenting the
28

1 reason for the sale (*e.g.*, “Labor Day Sale,” when in fact the sale is ongoing and not
2 limited to Labor Day).

3 86. Defendant’s representations were likely to deceive, and did deceive, Plaintiff
4 and reasonable consumers. Defendant knew, or should have known through the exercise
5 of reasonable care, that these statements were inaccurate and misleading.

6 87. Defendant’s misrepresentations were intended to induce reliance, and
7 Plaintiff saw, read, and reasonably relied on them when purchasing Evry Jewels Products.
8 Defendant’s misrepresentations were a substantial factor in Plaintiff’s purchase decision.

9 88. In addition, subclass-wide reliance can be inferred because Defendant’s
10 misrepresentations were material, *i.e.*, a reasonable consumer would consider them
11 important in deciding whether to buy the Evry Jewels Products.

12 89. Defendant’s misrepresentations were a substantial factor and proximate
13 cause in causing damages and losses to Plaintiff and the subclass.

14 90. Plaintiff and the subclass were injured as a direct and proximate result of
15 Defendant’s conduct because (a) they would not have purchased Evry Jewels Products if
16 they had known the discounts and/or regular prices were not real, (b) they overpaid for
17 the Products because the Products were sold at a price premium due to the
18 misrepresentation, and/or (c) they received products with market values lower than the
19 promised market values.

20 91. Accordingly, pursuant to California Civil Code § 1780(a)(2), Ms. Froomin,
21 on behalf of herself and all other members of the subclass, seeks injunctive relief.

22 92. CLRA § 1782 NOTICE. On June 13, 2024, a CLRA demand letter was
23 sent to Defendant’s Florida headquarters and registered agent via certified mail (return
24 receipt requested), that provided notice of Defendant’s violations of the CLRA and
25 demanded that Defendant correct the unlawful, unfair, false and/or deceptive practices
26 alleged here. Defendant does not have a California headquarters. If Defendant does not
27 fully correct the problem for Plaintiff and for each member of the California Subclass
28

1 within 30 days of receipt, Plaintiff and the California Subclass will seek all monetary relief
2 allowed under the CLRA.

3 93. A CLRA venue declaration is attached.

4 **Third Cause of Action:**

5 **Violation of California's Unfair Competition Law**

6 **(by Plaintiff and the California Subclass)**

7 94. Plaintiff incorporates each and every factual allegation set forth above.

8 95. Plaintiff brings this cause of action on behalf of herself and members of the
9 California Subclass.

10 96. Defendant has violated California's Unfair Competition Law (UCL) by
11 engaging in unlawful, fraudulent, and unfair conduct (i.e., violating each of the three
12 prongs of the UCL).

13 ***The Unlawful Prong***

14 97. Defendant engaged in unlawful conduct by violating the CLRA and FAL, as
15 alleged above and incorporated here. In addition, Defendant engaged in unlawful
16 conduct by violating the FTCA. The FTCA prohibits "unfair or deceptive acts or
17 practices in or affecting commerce" and prohibits the dissemination of false
18 advertisements. 15 U.S.C. § 45(a)(1). As the FTC's regulations make clear, Defendant's
19 false pricing schemes violate the FTCA. 16 C.F.R. § 233.1, § 233.2.

20 ***The Deceptive Prong***

21 98. As alleged in detail above, Defendant's representations that its Products
22 were on sale, that the sale was limited in time, that the Products had a specific regular
23 price, and that the customers were receiving discounts were false and misleading.

24 99. Defendant's representations were misleading to Plaintiff and other
25 reasonable consumers.

26 100. Plaintiff relied upon Defendant's misleading representations and omissions,
27 as detailed above.

The Unfair Prong

101. As alleged in detail above, Defendant committed “unfair” acts by falsely advertising that its Products were on sale, that the sale was limited in time, that the Products had a specific regular price, and that the customers were receiving discounts.

102. Defendant violated established public policy by violating the CLRA, the FAL, and the FTCA, as alleged above and incorporated here. The unfairness of this practice is tethered to a legislatively declared policy (that of the CLRA, the FAL, and the FTCA).

103. The harm to Plaintiff and the subclass greatly outweighs the public utility of Defendant’s conduct. There is no public utility to misrepresenting the price of a consumer product. This injury was not outweighed by any countervailing benefits to consumers or competition. Misleading consumer products only injure healthy competition and harm consumers.

104. Plaintiff and the subclass could not have reasonably avoided this injury. As alleged above, Defendant’s representations were deceptive to reasonable consumers like Plaintiff.

105. Defendant’s conduct, as alleged above, was immoral, unethical, oppressive, unscrupulous, and substantially injurious to consumers.

* * *

106. For all prongs, Defendant’s representations were intended to induce reliance, and Plaintiff saw, read, and reasonably relied on them when purchasing Evry Jewels Products. Defendant’s representations were a substantial factor in Plaintiff’s purchase decision.

107. In addition, subclass-wide reliance can be inferred because Defendant’s representations were material, i.e., a reasonable consumer would consider them important in deciding whether to buy Evry Jewels Products.

108. Defendant’s representations were a substantial factor and proximate cause in causing damages and losses to Plaintiff and the subclass members.

1 109. Plaintiff and the subclass were injured as a direct and proximate result of
2 Defendant's conduct because (a) they would not have purchased the Evry Jewels
3 Products if they had known that they were not discounted, and/or (b) they overpaid for
4 the Products because the Products were sold at the regular price and not at a discount.

5 **Fourth Cause of Action:**

6 **Breach of Contract**

7 **(by Plaintiff and the Nationwide Class)**

8 110. Plaintiff incorporates each and every factual allegation set forth above.

9 111. Plaintiff brings this cause of action on behalf of herself and the Nationwide
10 Class. In the alternative, Plaintiff brings this cause of action on behalf of herself and the
11 California Subclass.

12 112. Plaintiff and class members entered into contracts with Defendant when
13 they placed orders to purchase Products on Defendant's website.

14 113. The contracts provided that Plaintiff and class members would pay
15 Defendant for the Products purchased.

16 114. The contracts further required that Defendant provides Plaintiff and class
17 members with Products that have a market value equal to the regular prices displayed on
18 the website. They also required that Defendant provide Plaintiff and class members with
19 a discount equal to the difference between the price paid, and the regular prices
20 advertised. These were specific and material terms of the contract.

21 115. The specific discounts were a specific and material term of each contract.

22 116. Plaintiff and class members paid Defendant for the Products they
23 purchased, and satisfied all other conditions of their contracts.

24 117. Defendant breached its contracts with Plaintiff and class members by failing
25 to provide Products that had a regular price, former price, and/or prevailing market value
26 equal to the regular price displayed on its website, and by failing to provide the promised
27 discount. Defendant did not provide the discount that it had promised.

1 118. Plaintiff provided Defendant with notice of this breach of contract, by
2 mailing a notice letter to Defendant's headquarters and registered agent, on June 13,
3 2024.

4 119. As a direct and proximate result of Defendant's breaches, Plaintiff and class
5 members were deprived of the benefit of their bargained-for exchange, and have suffered
6 damages in an amount to be established at trial.

7 **Fifth Cause of Action:**

8 **Breach of Express Warranty**

9 **(by Plaintiff and the Nationwide Class)**

10 120. Plaintiff incorporates each and every factual allegation set forth above.

11 121. Plaintiff brings this cause of action on behalf of herself and members of the
12 Nationwide Class.

13 122. Defendant, as the marketer, distributor, supplier, and/or seller of the Evry
14 Jewels Products, issued material, written warranties by advertising that the Products had a
15 prevailing market value equal to the regular price displayed on Defendant's website. This
16 was an affirmation of fact about the Products (i.e., a representation about the market
17 value) and a promise relating to the goods.

18 123. This warranty was part of the basis of the bargain and Plaintiff and
19 members of the class relied on this warranty.

20 124. In fact, the Evry Jewels Products' stated market value was not the prevailing
21 market value. Thus, the warranty was breached.

22 125. Plaintiff provided Defendant with notice of this breach of warranty, by
23 mailing a notice letter to Defendant's headquarters and registered agent, on June 13,
24 2024.

25 126. Plaintiff and the class were injured as a direct and proximate result of
26 Defendant's breach, and this breach was a substantial factor in causing harm, because (a)
27 they would not have purchased Evry Jewels Products if they had known that the warranty
28

1 was false, or (b) they overpaid for the Products because the Products were sold at a price
2 premium due to the warranty.

3 **Sixth Cause of Action:**

4 **Quasi-Contract**

5 **(by Plaintiff and the Nationwide Class)**

6 127. Plaintiff incorporates each and every factual allegation in paragraphs 1-46
7 and 53-63 above.

8 128. Plaintiff brings this cause of action in the alternative to her Breach of
9 Contract claim (Claim IV) on behalf of herself and the Nationwide Class. In the
10 alternative, Plaintiff brings this claim on behalf of herself and the California Subclass.

11 129. As alleged in detail above, Defendant's false and misleading advertising
12 caused Plaintiff and the class to purchase Evry Jewels Products and to pay a price
13 premium for these Products.

14 130. In this way, Defendant received a direct and unjust benefit, at Plaintiff's
15 expense.

16 131. (In the alternative only), due to Defendant's misrepresentations, its
17 contracts with Plaintiff and other class members are void or voidable.

18 132. Plaintiff and the class seek restitution, and in the alternative, rescission.

19 **Seventh Cause of Action:**

20 **Negligent Misrepresentation**

21 **(by Plaintiff and the California Subclass)**

22 133. Plaintiff incorporates each and every factual allegation set forth above.

23 134. Plaintiff brings this cause of action on behalf of herself and members of the
24 California Subclass.

25 135. As alleged more fully above, Defendant made false representations and
26 material omissions of fact to Plaintiff and subclass members concerning the existence
27 and/or nature of the discounts and savings advertised.

28 136. These representations were false.

137. When Defendant made these misrepresentations, it knew or should have known that they were false. Defendant had no reasonable grounds for believing that these representations were true when made.

138. Defendant intended that Plaintiff and subclass members rely on these representations and Plaintiff and subclass members read and reasonably relied on them.

139. In addition, subclass-wide reliance can be inferred because Defendant's misrepresentations were material, i.e., a reasonable consumer would consider them important in deciding whether to buy the Evry Jewels Products.

140. Defendant's misrepresentations were a substantial factor and proximate cause in causing damages and losses to Plaintiff and subclass members.

141. Plaintiff and subclass members were injured as a direct and proximate result of Defendant's conduct because (a) they would not have purchased Evry Jewels Products if they had known that the representations were false, and/or (b) they overpaid for the Products because the Products were sold at a price premium due to the misrepresentation.

Eighth Cause of Action:

Intentional Misrepresentation

(by Plaintiff and the California Subclass)

142. Plaintiff incorporates each and every factual allegation set forth above.

143. Plaintiff brings this cause of action on behalf of herself and members of the California Subclass.

144. As alleged more fully above, Defendant made false representations and material omissions of fact to Plaintiff and subclass members concerning the existence and/or nature of the discounts and savings advertised.

145. These representations were false.

146. When Defendant made these misrepresentations, it knew that they were false at the time that it made them and/or acted recklessly in making the misrepresentations.

1 147. Defendant intended that Plaintiff and subclass members rely on these
2 representations and Plaintiff and subclass members read and reasonably relied on them.

3 148. In addition, subclass-wide reliance can be inferred because Defendant's
4 misrepresentations were material, i.e., a reasonable consumer would consider them
5 important in deciding whether to buy the Evry Jewels Products.

6 149. Defendant's misrepresentations were a substantial factor and proximate
7 cause in causing damages and losses to Plaintiff and subclass members.

8 150. Plaintiff and subclass members were injured as a direct and proximate result
9 of Defendant's conduct because (a) they would not have purchased Evry Jewels Products
10 if they had known that the representations were false, and/or (b) they overpaid for the
11 Products because the Products were sold at a price premium due to the
12 misrepresentation.

13 **VII. Relief.**

14 151. Plaintiff seeks the following relief for herself and the proposed class:

- 15 • An order certifying the asserted claims, or issues raised, as a class action;
- 16 • A judgment in favor of Plaintiff and the proposed class;
- 17 • Damages, treble damages, and punitive damages where applicable;
- 18 • Restitution;
- 19 • Rescission;
- 20 • Disgorgement, and other just equitable relief;
- 21 • Pre- and post-judgment interest;
- 22 • An injunction prohibiting Defendant's deceptive conduct, as allowed by
- 23 law;
- 24 • Reasonable attorneys' fees and costs, as allowed by law;
- 25 • Any additional relief that the Court deems reasonable and just.

26 **VIII. Demand for Jury Trial.**

27 152. Plaintiff demands the right to a jury trial on all claims so triable.
28

1 Dated: June 25, 2024

Respectfully submitted,

2 By: /s/ Christin Cho

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